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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KATHRYN E. WOLVERTON, DEBORAH)
GREENE, MICHAEL GREENE,)
individually and on behalf of each other)
herein,)

Plaintiffs,)

vs.)

HSBC BANK USA, N.A.; HSBC)
MORTGAGE CORP. USA, a Delaware)
corporation; MERSCORP, INC., a Virginia)
corporation; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC., a)
Delaware corporation; MORTGAGEIT)
SECURITIES CORP., a subsidiary of)
DEUTSCHE BANK NATIONAL TRUST)
COMPANY; MORTGAGE LOAN TRUST)
SERIES 2007-1; MORTGAGE PASS-)
THROUGH CERTIFICATES, and)
Individuals 1 to 50, inclusive; and ROES)
Corporations 1 to 30, inclusive; and all other)
persons unknown claiming any right, title,)
estate, lien, or interest in the real property)
described in the Complaint adverse to)
Plaintiff's ownership, or any cloud upon)
Plaintiff's title thereto,)

Defendants.)

Case No: 2:10-cv-00700-PMP-PAL

**PLAINTIFFS' MOTION TO SET ASIDE
DISMISSAL**

1 *Chong, Leonard E. Schwartzer, Bankruptcy Trustee, et al.*, Dist. Ct. Case No. 2:09-cv-00661-KJD-
2 LRL (Dec. 4, 2009) (“MERS” had no standing as a creditor to pursue its claim against the
3 property, due to inability to show a valid chain of title on transfers of the Note, which is why
4 Defendants' electronic registration system was in most cases defective), *affirming In re Joshua*
5 *and Stephanie Mitchell*, U.S. Bk. Ct., Dist. Nev. Case No. BK-S-07-16226-LBR (*Aug. 19, 2008*);
6 *see also Landmark Bank v. Kesler*, 2009 Kan. Lexis 834; *MERS v. Southwest Homes of Arkansas*,
7 2009 Ark. Lexis 121. In yet another very important decision of national significance, on May 20,
8 2010, the United States Bankruptcy Court for the Eastern District of California ruled that MERS
9 cannot have standing to foreclose (without such proof).

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11 As in the above-cited cases, none of the Defendants can prove that they are the current holder
12 in due course of the Note, any more than any other third party stranger to the transaction, and,
13 therefore, there is a risk that a true holder in due course of the Note may surface in the future,
14 demanding payment. Plaintiffs have made requests for evidence or documentation showing the
15 entire chain of title of the loan, and agreements affecting title. Plaintiffs allege that, like the vast
16 majority of loans made in the U.S. during the same time period, Defendants purport to act as the
17 Note holder, but is actually an agent of the true undisclosed holder of the Note. To illustrate, in
18 Utah, recently, as widely reported, Bank of America was enjoined from any foreclosure
19 proceedings. Since the Note and deed of trust were executed, the purported trustee and current
20 Note holder have changed, but Defendants cannot show the chain of assignments.

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22 It is well-established that a case should not be dismissed prior to the Plaintiffs having
23 sufficient time to conduct discovery. *See e.g. Vision Air*, 121 Nev. 113(2005) (dismissal denied – 8
24 months is not sufficient time to conduct discovery). That is particularly the case here, where the
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1 entire lending industry has gone through such an extraordinary period of non-transparency and
2 untrustworthiness, and full discovery is, therefore, indispensable.

3 Under the case law set forth above, Defendants do not have any standing to collect on the
4 Note or to foreclose on the Property, and, Plaintiffs must prevail. Defendants have committed
5 numerous other wrongdoings, as discussed below, in predatory and fraudulent lending practices,
6 including, without limitation, the acts set forth in Plaintiffs' Complaint. Plaintiffs will seek
7 discovery as to whether Defendants have been compensated for the loan by the federal stimulus
8 program or "TARP." This is the basis of the Quiet Title claim discussed below.

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10 **II. PLAINTIFFS' CLAIMS OF FRAUD ARE PLEADED**
11 **WITH SUFFICIENT PARTICULARITY**
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13 The fraud occurred in connection with the making of the loan, by the Defendants, in,
14 among other things, committing the acts set forth in the Complaint, during the loan approval
15 process, and the subsequent securitization/sale of the loan. That is sufficiently specific, and, to the
16 extent Plaintiffs cannot be more specific at this time, it is symptomatic of the entire series of
17 transactions Plaintiffs allege to have occurred, which resulted in the current situation, wherein no
18 current holder in due course of the Note can be identified, upon information and belief. Plaintiffs
19 do not claim that selling the loan, of itself, was wrongful; however, the problem is that Defendants
20 cannot produce a current holder in due course of the Note. Discovery is needed in order for
21 Plaintiffs to determine more details, including, without limitation, relating to conspiracy to commit
22 fraud, to the extent such information is available. This involves a period of unprecedented non-
23 transparency in the financial industry, and, after discovery, and full discovery is critical, in
24 particular, due to Defendants' refusal to provide adequate disclosure as to the chain of title to the
25 Note, the appraisal submitted to the loan underwriter, the fees and commissions paid, and other
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1 critical information which would, upon information and belief, reveal a fraudulent scheme to earn
2 excess profits, commissions and fees, at the expense of Plaintiffs.

3 Plaintiffs believe, pending further discovery, that this is much more than a simple case of
4 Plaintiffs being “unsuitable” for the loan. This is a case of active concealment and
5 misrepresentation of material facts by Defendants possessing much superior bargaining powers,
6 and access to information, thereby justifying Plaintiffs' reliance upon Defendants' statements and
7 omissions.
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9 **III. PLAINTIFFS MUST PREVAIL ON THEIR CLAIM**
10 **FOR UNJUST ENRICHMENT**

11 Defendants attempt to dismiss Plaintiffs' claim of unjust enrichment solely on the basis of
12 the existence of a contract. Such a position is completely unsupportable, however, because much
13 of the wrongful conduct alleged by Plaintiffs occurred prior to or separate from and outside the
14 existence of the contract.
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16 **IV. PLAINTIFFS' CAUSE OF ACTION FOR DECLARATORY**
17 **RELIEF BECAUSE THEIR SUBSTANTIVE CLAIMS WILL PREVAIL**

18 Defendants state that because Plaintiffs' substantive claims will fail, declaratory relief
19 should not be granted, but that is not the case. For the same reason, Plaintiffs' lis pendens lien
20 should definitely remain in place.
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V. CONCLUSION

Based on the foregoing, and the need for discovery as to the identity of the current holder of the Note and other facts related to Plaintiffs' claims, Plaintiffs respectfully request the Court to set aside dismissal. This is a case that clearly should be decided on the merits, after discovery of heretofore concealed facts.

DATED this 16th day of August, 2010.

CONWAY LAW FIRM

/s/ Jeffrey D. Conway
JEFFREY D. CONWAY, ESQ.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all Parties to this action.

/s/ John R. Conway
an employee of Conway Law Firm